

C. Remarks/Argument

Reconsideration of this application is respectfully requested. Upon entry of the amendments, claims 1, 7-14, 20-25, 31-41, 43, 43, and 48-51 will be pending. Claims 44-47 were previously canceled and claims 2-6, 15-19, 26-30, and 42 have been canceled herein without prejudice or disclaimer to being pursued in a later filed application. Claims 11-14, 20-25, 31-33, 37-41, and 43 are withdrawn as directed to non-elected inventions. Applicants hereby request rejoinder of these withdrawn process claims, which have been amended herein to depend from a corresponding product claim. *See* MPEP §821.04 and 37 C.F.R. § 1.104.

Claims 1, 7-10, and 34-36 have been amended herein for clarity and to more particularly point out and distinctly claim the invention. Support for these amendments can be found throughout the application and claims as filed. Claims 48-51 have been added herein. Support for these claims can also be found throughout the specification and claims as filed. Thus, no new matter has been added.

Indefiniteness

The Examiner rejected claims 1-10 and 34-36 as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. According to the Examiner, the phrase "the peptide is characterized in that it elicits cell attachment response" of claim 1 is unclear regarding attachment to what and via which process.

Applicants thank the Examiner for the suggested amendment and have in fact amended claim 1 along the lines suggested by the Examiner. The amendment is believed to overcome the rejection. Accordingly, reconsideration and withdrawal are respectfully requested.

Applicants have also amended claims 34 and 36 herein to be dependent from claim 1 thereby incorporating all the limitations of the claim.

The Examiner also rejects claim 36 for being unclear with regard to the phrase “cosmetic beneficial effect”. Claim 36 has been further amended herein to clarify that the liposome portion of the composition comprises at least one active ingredient that possesses a beneficial cosmetic effect. The amendment is believed to overcome the rejection. Accordingly, reconsideration and withdrawal are respectfully requested.

Claim Objections

The Examiner objects to claims 1-10 and 34-36 due to inconsistent lexicography (*e.g.*, “haptotactic-peptide liposomal” v. “haptotactic peptide-liposomal”). Applicants have amended claims 1, 7, 34 and 36 to recite "...haptotactic peptide-liposomal..." The amendment is believed to overcome the rejection. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

Double Patenting

U.S. Patent No. 7,122,620

The Examiner rejected claims 1-10 and 34-36 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 7,122,620. According to the Examiner, although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-4 of the ‘620 patent are directed to a peptide or any type of composition comprising a peptide identical to that of SEQ ID NO:1 of the instant application. The Examiner further states that compositions comprising liposomes need no reference for an introduction, as the use of liposome to carry *e.g.* other active agents, in combination with peptides is well known in the art, and that the claims are therefore obvious absent evidence to the contrary (*i.e.*, that these specific liposomes carry some other unexpected property not routinely used within the peptide composition arts). Applicants respectfully traverse.

Although liposomes are well known in the art to carry other active ingredients, and are employed by the present invention to deliver biologically active molecules through a cell membrane, *in vitro* or *in vivo* (see, for example, instant specification paragraphs [0074], [0100]), the haptotactic peptide-liposomal compositions of the instant invention surprisingly enhance liposome uptake by different cell types. As described in the instant specification (Example 4, paragraphs [0152]-[0154]), the uptake of either the free haptotactic peptide or the free liposomes into cells was significantly lower compared to the uptake of the haptide-liposomal composition of the invention. As further described by the instant specification, the haptotactic peptide-liposomal composition of the present invention forms a unique structure, wherein the typical aggregated appearance of the haptotactic peptide disappear when the composition is formed (Example 3 of the instant specification). Thus, Applicants respectfully submit that the haptide-liposomal compositions of the present invention are unique in their structure and function and therefore possess unexpected properties. Accordingly, the haptide-liposomal compositions of the present invention should not be considered obvious in view of, nor encompassed by, the disclosure of U.S. Patent No. 7,122,620.

Accordingly, Applicants contend that claims 1-10, 34-36, and new claims 48-49 are not obvious in view of claims 1-4 of the '620 patent. Reconsideration and withdrawal of the rejection is requested.

U.S. Patent Publication No. 20070009571

The Examiner provisionally rejects claims 1-10 and 34-36 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11-20 of co-pending U.S. Patent Publication No. 20070009571 (hereinafter the '571 publication). According to the Examiner, although the conflicting claims are not identical, they are not patentably distinct from each other because claims 11-20 of the '571 publication are directed to compositions/products comprising a peptide identical to that of SEQ ID NO:1 of the instant application. The Examiner further states that compositions comprising liposomes need no reference for an introduction, as the use of

liposome to carry e.g. other active agents, in combination with peptides is well known in the art, and that the claims are therefore obvious absent evidence to the contrary (*i.e.*, that these specific liposomes carry some other unexpected property not routinely used within the peptide composition arts). Applicants respectfully traverse.

Claims 11-14 of the '571 publication recite a composition comprising a haptotactic peptide that is attached to a surface. In contrast, the haptide-liposomal composition of the instant invention is formed when the haptides are dissolved within the lipid bilayer of the liposome (*See e.g.*, paragraph [0150] of the published application).

Similarly, claims 18-20 of the '571 publication recite a cell structure wherein the haptotactic peptide is bound to a cell and attached to the structure such that the cell is supported by the structure. By contrast, in the haptide-liposomal composition of the present invention the haptides are dissolved in the lipid bilayer of the liposome, and the composition may be internalized by a cell.

Finally, claims 15-17 of the '571 publication recite a polymer composition, comprising a plurality of subunits and plurality of linker moieties for attaching each of the plurality of subunits, wherein the subunits are haptotactic peptides. However, the claimed invention of the instant application does not recite such polymer compositions.

Accordingly, Applicants contend that claims 1-10, 34-36, and new claims 48-49 are not obvious in view of claims 11-20 of the '571 publication. Reconsideration and withdrawal of the rejection is requested.

U.S. Patent Publication No. 20070066535

The Examiner also rejects claims 1-10 and 34-36 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2 of co-pending U.S. Patent Publication No. 20070066535 (hereinafter the '535 publication). According to the Examiner, although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-2 of the '535 publication are directed to peptide/products comprising a peptide of at least 50-70% identity to the carboxy termini

of fibrinogen. SEQ ID NO:14 of the '535 publication, which is identical to that of SEQ ID NO:1 of the instant application, meets the limitations of claims 1-2. The Examiner further states that compositions comprising liposomes need no reference for an introduction, as the use of liposome to carry e.g. other active agents, in combination with peptides is well known in the art, and that the claims are therefore obvious absent evidence to the contrary (*i.e.*, that these specific liposomes carry some other unexpected property not routinely used within the peptide composition arts). Applicants respectfully traverse.

Applicants respectfully submit that claims 1-2 of the '535 publication recite an isolated haptotactic peptide and not a haptotactic peptide-liposomal composition as recited by the instant claims. Furthermore, although SEQ ID NO:14 of the '535 publication is identical to that of SEQ ID NO:1 of the instant application, SEQ ID NO:14 is not claimed in the '535 publication. In fact, in a paper filed December 19, 2007 (date stamped December 26, 2007 by the Office) responding to a restriction requirement issued in the application corresponding to the '535 publication, SEQ ID NO:5 was elected (with traverse). Therefore, Applicants believe the rejection is moot and request reconsideration and withdrawal of the rejection.

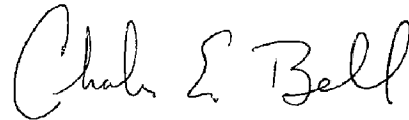
Rejoinder of Process Claims

On the basis of the foregoing amendments and remarks, action on the merits of the product claims and a Notice of Allowance thereof are respectfully requested. Similarly, because Applicants have herein requested rejoinder of the process claims and have amended those claims to be dependent upon the product claims herein, a Notice of Allowance is also respectfully requested for the process claims. Should any questions or issues arise concerning this application, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Marx et al.
U.S.S.N.: 10/533,826

With a two-month petition for extension of time and payment of the corresponding fee, this response is due on or before February 21, 2008. The Commissioner is hereby authorized to charge payment of any additional fees that may be required, or credit any overpayment of same, to Deposit Account No. 08-1935, Reference No. 2488.014.

Respectfully submitted,

A handwritten signature in cursive script that reads "Charles E. Bell".

Dated: February 21, 2008

Charles E. Bell, Reg. No. 48,128
Attorney for Applicants
Heslin Rothenberg Farley & Mesiti P.C.
Telephone: (518) 452-5600
Facsimile: (518) 452-5579
Customer Number 23405